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T.R.A. DOCKET ROOM  
January 14, 2005

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VIA HAND DELIVERY

Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *BellSouth's Motion For The Establishment Of A New Performance Assurance Plan*  
Docket 04-00150

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Motion to Compel Discovery Responses* to each of the following parties:

Access Integrated Networks, Inc.  
Access Point, Inc.  
AT&T Communications of the South  
Central States, LLC  
Birch Telecom  
Competitive Carriers of the South, Inc.  
Covad Communications Company  
ITC ~ DeltaCom  
IDS Telecom, LLC  
InLine

KMC Telecom  
LecStar Telecom, Inc.  
MCI  
Momentum Telecom, Inc.  
Network Telephone Corp.  
NuVox Communications, Inc.  
Talk America  
Xspedius Communications  
Z-Tel Communications, Inc.

Copies of the enclosed are being provided to counsel of record.

Cordially,



Joelle Phillips

JJP:ch

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BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth's Motion For The Establishment Of A New Performance Assurance Plan*

Docket 04-00150

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO COMPEL DISCOVERY RESPONSES FROM COMPSOUTH**

BellSouth Telecommunications, Inc. ("BellSouth") files this *Motion to Compel Discovery Responses from CompSouth* and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

**INTRODUCTION**

On January 7, 2005, pursuant to the scheduling order in this docket, BellSouth responded to CompSouth's discovery in this docket and provided CompSouth more than 6,000 pages of responsive information and documents. BellSouth took the responsibility of discovery seriously: investing hours of time to search for and review information.

On the day that BellSouth electronically served the parties and the TRA with this voluminous amount of information in response to discovery, BellSouth received in turn CompSouth's response. CompSouth served BellSouth with a response asserting ten general objections (reiterated in turn as to each request), and, in substantive responses to the discovery, CompSouth provided precisely *nothing at all*. Moreover, CompSouth's individual members simply ignored the discovery

served on them. CompSouth and its members cannot make themselves immune to discovery by litigating "in a group."

As discussed below, BellSouth's discovery focused largely on collecting the specific factual examples that support CompSouth's general allegations of poor service from BellSouth. If CompSouth refuses to provide such details, then it should be barred from asserting any issues of poor performance in this docket.

Obviously, the TRA convened this docket and instructed the hearing office to set a schedule so that this case could proceed. Discovery is needed to get to the actual facts underlying arguments in this case. CompSouth's failure to respond to discovery obstructs the process of this docket and it should not be tolerated.

#### **RESPONSES REGARDING SPECIFIC OBJECTIONS**

BellSouth responds below regarding each specific discovery request and the objection interposed by CompSouth. CompSouth's objections were not even focused in detail as to each request.<sup>1</sup> Rather, CompSouth merely referenced in response to each request, several of its General Objections. BellSouth has attempted to avoid redundancy in responding to these General Objections cited repetitively by CompSouth. For the ease of the Hearing Officer, however, BellSouth has set forth each discovery request and response individually.

**1. State each example of BellSouth's performance in its wholesale service of any kind that you will contend in this docket has declined in quality since BellSouth obtained 271 relief in Tennessee. For each such example, provide the basis for your contention, including all examples of specific instances of performance issues of which you are aware, and, if your contention is based on**

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<sup>1</sup> CompSouth's failure to identify its objections in a manner that was tailored to the requests should not be permitted. It wastes time by forcing BellSouth and the TRA to speculate as to how these "general objections" relate as applied to the specific discovery request.

any fact other than your company's own experience, state the source of such information, including the company involved.

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8 and 9. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request. CompSouth's reference to various general objections simply does not "match up" with the particular interrogatory in this case.

First, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable. CompSouth is being asked what CompSouth, not its members, knows. CompSouth participating members were served with the individual discovery to which they must respond. Importantly, however, CompSouth's members have not only failed to answer these questions, *they have failed to make any reply, objection or response whatsoever to the individualized discovery served upon them.*<sup>2</sup> For this reason, CompSouth's argument regarding its members' rights is particularly unpersuasive and obstructive. CompSouth and its members cannot hide behind their "coalition" to avoid answering the simple question: tell us exactly what service issues you are aware of.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The interrogatory clearly requests specific factual examples, not theories or opinions, on which CompSouth bases contentions (that its members have already expressed) regarding quality of BellSouth's wholesale performance. As CompSouth itself asserts in its General Objections, BellSouth's wholesale performance, and whether incentives are needed to address any decline, are issues in this case. Moreover, CompSouth's prior involvement in this case has made clear that it will contend that certain performance measurements are necessary to incent improved performance. The interrogatory simply seeks examples that would support any argument regarding decline in service. The connection to the issues in this case could not be more clear.

Regarding "General Objection No. 3", CompSouth, as it has previously attempted in this case, now attempts to argue that discovery is premature in order to reargue its rejected request for a different schedule, a schedule permitting CompSouth to delay this matter. The Authority has decided that this matter, including discovery, should proceed now. CompSouth has been in possession of a

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<sup>2</sup> BellSouth is filing motions to compel to address the individual members' failure to respond to discovery

new performance measurements plan filed in May and has participated throughout BellSouth's region in discussions regarding Service Quality Measurements and Self Effectuating Enforcement Mechanisms. Suggesting that CompSouth is somehow not yet ready to articulate or develop factual contentions for legal theories is simply unreasonable. ***Most importantly, this interrogatory does not simply ask what CompSouth will contend or what CompSouth thinks of Bellsouth's proposed plan. Rather, the interrogatory asks for specific factual examples forming the basis of CompSouth's complaints regarding service.*** The facts on which contentions are based are not legal theories and are not subject to "development" (or change) later on in a case. Rather, the facts are what they are and there is no time at which revelation of facts that may undermine a party's position is "premature".

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is unreasonably narrow. This docket will be about the formulation of a plan that measures, and is used to impose penalties for the purpose of incentives, regarding performance. The operation of the incentives now in place are clearly within the scope of the many factors the Authority may consider in choosing how to alter the existing plan or develop a new one. Similarly, comparisons between the operation of these plans in Tennessee and in other states are also relevant in that they provide the Authority with a point of reference for comparison – again as merely one of several factors the TRA may use in evaluating the right balance for the performance measurements plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is invalid. As noted above, the fact that one has the burden of proof in a docket is actually ***more reason***, not less, to ensure that that party has an opportunity to discover the facts it will need to marshal in support of its complaint.<sup>3</sup> BellSouth has sought factual information from CompSouth that, as articulated above, is relevant in this case. CompSouth's attempt to withhold such information on the basis of irrelevance is a thinly-veiled attempt to deprive BellSouth of facts that obviously will undermine CompSouth's position and support BellSouth's. If CompSouth's "burden of proof" theory were accepted, it would prevent any plaintiff from taking factual discovery.

The assertion, (referenced in "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 1 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated facts before making assertions

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<sup>3</sup> BellSouth does not agree that it has the burden of proof. The parties' settlement specifically provided that the TRA would revisit the plans

in its pleadings and in the workshop about the need to incent improved performance. If CompSouth has no factual information, then it is obligated to admit that, as well.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable. While BellSouth has been presented with letters on behalf of participating CLECs, those letters also fail to provide specific examples of the various areas identified by CLECs. BellSouth has attempted to investigate those matters and needs the additional information it seeks in these discovery requests in order to evaluate particularized situations, rather than simply vague, generalized complaints. In fact, the purpose of exchanging letters regarding these matters was precisely to force the parties to stop talking in generalizations and begin talking about specifics. While BellSouth was not able to require the CLECs to provide specific examples in their letters, BellSouth is entitled to obtain factual discovery regarding any specific example regarding which CompSouth is aware.

**2. Identify each SEEM penalty payment you have received in the last twelve months, and, for each payment, describe in detail how such payment relates to actual harm sustained by your company as a result of the wholesale service measured by the particular benchmark for which the SEEM payment was provided.**

**RESPONSE:** To the extent that BellSouth seeks information as to SEEM penalty payments that CompSouth members have received, CompSouth objects on the grounds stated in General Objections 2, 8 and 9. As to the remainder of the interrogatory, CompSouth objects on the grounds stated in 3, 5, 6, 8 and 9. CompSouth also objects on the grounds of relevancy, since, as BellSouth is aware (because BellSouth is advocating a "transactions"-based performance plan to supplant the existing plan), CLECs are unable to relate the payment of particular penalties under the current plan to specific transactions. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request. Again, CompSouth's reference to its general objections does not explain its refusal to respond.

As noted above, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is irrelevant. CompSouth is being asked what CompSouth knows. CompSouth participating members were served with their own individual discovery, which they ignored.

"General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. This question simply asks for a comparison between the payments received and any real harm experienced. The Authority should consider this in deciding how to change the plan. Moreover, if CLECs cannot specifically articulate some harm – in real terms – then the Authority should revisit the need to have any Plan at all. Like the first interrogatory, this request is far from "premature" or "subject to further development". It is a request to compare a fixed figure (the payment) to the economic harm suffered as a result of service quality.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is again unreasonably narrow. This docket will be about the formulation of a plan that measures, and is used to impose penalties for the purpose of incentives, regarding performance. While the CLECs may believe that the plan should not relate to real harm suffered, BellSouth will argue that it should relate in some way to real impact of performance. As a result, BellSouth is entitled to discovery facts regarding the "real" harm. Similarly, comparisons between the operation of these plans in Tennessee and in other states are also relevant in that they provide the Authority with a point of reference for comparison – again, while the CLECs may discount the weight of that argument, this is not a relevance issue.

As noted above, CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is simply specious.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is also unclear. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 2 is confusing. Similarly, as to the breadth of the request, CompSouth has not even referenced why the information sought in this question is too burdensome to produce.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable. BellSouth is not aware of any information quantifying harm resulting from service problems. (The use of this format of reference to general objections, rather than a specifically-tailored objection is problematic. It certainly does not provide adequate information to understand the objection being made.) The bottom line regarding this question is that BellSouth is entitled to obtain factual discovery regarding the specific harms of which CompSouth is aware.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

**3. State the percentage of your company's Tennessee (intra-state) revenue represented by Tennessee SEEM payments for each calendar year beginning in 2002.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2 and 5.

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request. CompSouth's reference to various general objections simply does not "match up" with the particular interrogatory in this case.

First, "General Objection No. 2" referenced is not a valid basis to withhold discovery. Bellsouth is happy to receive the information instead directly from each member company. Importantly, however, CompSouth's members have not only failed to answer these questions, *they have failed to make any reply, objection or response whatsoever to the individualized discovery served upon them.*

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is unreasonably narrow. This docket will be about the formulation of a plan that measures, and is used to impose penalties for the purpose of incentives, regarding performance. This comparison will be a useful factor for the Authority to consider in evaluating the appropriate size of penalties under the plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket, as discussed above, it not valid.

**4. Identify all CLEC customers (if any) that you contend you have lost as a result of the quality of wholesale service provided by BellSouth, and for each such customer, identify the service issue you believe caused the loss.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 7, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.



**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request.

First, "General Objection No. 2" referenced is not a valid basis to withhold discovery. Again, BellSouth will happily accept answers from the individual member companies in response to the discovery served on them. Importantly, however, CompSouth's members have not only failed to answer these questions, *they have failed to make any reply, objection or response whatsoever to the individualized discovery served upon them.*

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The interrogatory clearly requests specific examples of customers that the member companies believe or assert were lost due to BellSouth's performance. As CompSouth itself asserts in its General Objections, the quality and impact of BellSouth's wholesale performance is an issue that will be considered in evaluating any new plan to incent appropriate performance.

As noted above, regarding "General Objection No. 3", CompSouth, as it has previously in this case, merely argues that discovery is "premature" in order to delay this matter. The schedule has been set, and factual discovery regarding loss of customers is not a matter subject to "development" (or change) later on in a case.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is unreasonably narrow. Again, BellSouth merely seeks some quantification to back up CLEC assertions that BellSouth service quality causes them to lose customers.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is not valid, as discussed above.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is not reasonable. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 4 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated some facts regarding lost customers before making assertions in its pleadings and in the workshop about the need to incent improved performance due to loss of CLEC customers. If CompSouth has no factual information, then it is obligated to admit that.

As referenced above, the entry of the protective order in this case rendered "General Objection No. 7", regarding trade secrets, proprietary and confidential information invalid.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is, again, not sufficient. BellSouth has not already been provided any quantification regarding losses of customers from any of the CLECs at the workshop. Thus far, CompSouth has not presented any specific evidence regarding CLEC customers (if any) that it contends have been lost by its member companies as a result of the quality of wholesale service provided by BellSouth. Likewise, CompSouth has provided no specifics regarding the service issue its member companies believe caused any such loss. If CompSouth should persist in its refusal to support its broad, unsupported allegations with actual facts, then its assertions should be accorded no credibility or weight by the Authority.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since the adoption of the plan in Tennessee. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**5. Do you contend that your company has sustained harm to its reputation as a quality local service provider as a result of BellSouth's wholesale performance. If your answer is anything other than an unqualified "no", then state all facts, including all specific customer information, on which your contention is based.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 7, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request.

Again, as to "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) CompSouth's members are not entitled to pursue litigation as a group and thereby avoid discovery. BellSouth will happily accept this information in response to the individual discovery issued to, and ignored by, the CompSouth members.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The interrogatory clearly requests specific examples, not theories or opinions, on which CompSouth bases contentions (that some of its members have already expressed) regarding the real impact of the quality of BellSouth's wholesale performance. As CompSouth itself asserts in its General Objections, BellSouth's wholesale performance, and whether incentives are needed to address any decline, are issues in this case. Moreover, CompSouth's prior involvement in this case has made clear that it will contend that certain performance measurements are necessary to incent improved performance. The interrogatory simply seeks real examples to back up CLEC arguments (arguments that have already been asserted) about harm to reputation. The connection to the issues in this case could not be more clear.

Again, CompSouth references "General Objection No. 3", in arguing that discovery is premature. BellSouth merely seeks real, factual examples of any actual harm to reputation CLECs believe they have experienced. The facts on which contentions are based are not legal theories and are not subject to "development" (or change) later on in a case. Certainly, when the CLECs made assertions about BellSouth's wholesale performance during the workshop and in earlier argument in this case, the CLECs did not indicate that such assertions were "premature theories" that might change later. Instead, they presented those assertions as factual, based on real experience. BellSouth merely seeks the facts on which those allegations were based. Again, the facts are what they are, and either the CLECs have such facts to back up their allegations or they must say that they do not.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", as explained above, CompSouth's assertion of relevance is unreasonably narrow. This docket will be about the formulation of a plan that measures, and is used to impose penalties for the purpose of incentives, regarding performance. The type of incentives and the operation of such incentives are clearly within the scope of the many factors the Authority may consider in choosing whether to alter the existing plan or develop a new one. Similarly, comparisons between the operation of these plans in Tennessee and in other states are also relevant in that they provide the Authority with a point of reference for comparison – again as merely one of several factors the TRA may use in evaluating the right balance for the performance measurements plan.

As BellSouth has already referenced, CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and thus cannot obtain facts from other participants in this docket is simply wrong.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is not explained as applied to this request. The

interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 5 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated facts before making assertions in its pleadings and in the workshop about the need to incent improved performance to avoid reputational harm. If CompSouth has no factual information, then it is obligated to admit that.

The protective order in this case renders "General Objection No. 7" regarding trade secrets, proprietary and confidential information invalid.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is again unreasonable. While CLECs have generally referenced reputational harm, BellSouth received no facts quantifying or exemplifying these general claims, nor is BellSouth in possession of any facts establishing harm to CLEC reputations.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since the implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

6. If you contend that there have been instances where BellSouth erroneously reported that a trouble has been repaired and the trouble ticket closed, yet your customer still did not have service, please provide the trouble ticket number, date of ticket closure and line or circuit identifier for each instance.

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request.

Again, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is not valid. BellSouth will happily accept information from the member companies, but as noted above, CompSouth's members have not only failed to answer these questions, *they have*

***failed to make any reply, objection or response whatsoever to the individualized discovery served upon them.***

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The interrogatory clearly requests specific examples of service outages and identifying references for those examples. CompSouth member CLECs have already made these contentions regarding quality of BellSouth's wholesale performance during the workshop. The interrogatory merely seeks identifying information regarding real and specific incidents in order to enable BellSouth to evaluate those situations (if any) in which CLEC customers had such experiences. If none of the CLECs who raised this issue can identify a date, a circuit, a customer name, or other particularized account of these alleged experience, then they should be barred from asserting anything in this docket regarding such allegations.

Again, the contention in "General Objection No. 3", that discovery is premature, is nothing more than an attempt to reargue CompSouth's rejected request for a different schedule, a schedule permitting CompSouth to delay this matter. The facts on which contentions (already expressed by CompSouth) are based are not legal theories and are not subject to "development" (or change) later on in a case.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is unreasonably narrow and particularly confusing as issues the CLECs themselves raised in the workshop. How could these issues be relevant to the workshop, but not the case regarding SQM/SEEMs?

Again, CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" is simply not a valid objection to discovery.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously (specifically used by CLECs during the workshop), and the objection fails to point out in any fashion what aspect of Interrogatory No. 6 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated facts before making assertions about service outages in the workshop. If CompSouth has no factual information, then it is obligated to admit that.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable. While CLECs raised the general allegation of such service issues, BellSouth has never been provided specific

examples of such events. BellSouth has attempted to investigate the matters raised by CLECs in the workshop and needs the additional information it seeks in these discovery requests in order to evaluate particularized situations, rather than simply vague, generalized complaints.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information it has will be burdensome.

**7. Identify all damages (if any) you have sustained that arise out of the quality of wholesale service provided by BellSouth pursuant to the Plan.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request.

Again, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is irrelevant. BellSouth will happily accept information from either CompSouth or its members, who have ignored the individual discovery served on them.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is again unreasonably narrow. This docket will be about the formulation of a plan that measures, and is used to impose penalties for the purpose of incentives, regarding performance. The type of incentives and the operation of such incentives are clearly within the scope of the many factors the Authority may consider in choosing whether to alter the existing plan or develop a new one. The Authority must evaluate whether the balance of penalties in the Plan is warranted and comparing those penalties to the real harm caused is one factor to consider. CompSouth's suggestion that the Authority should be unconcerned with *real* impact on *real* companies and customers is nonsensical.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" as noted above is not valid.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of

Interrogatory No. 7 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. If the performance at issue cannot be shown to have caused some demonstrable harm, then is a Plan really warranted at all?

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is wrong. BellSouth received no specific identification of all harms the CLECs believe they have experienced. In order to prepare its case, BellSouth is entitled to discover the nature of the CLECs' contentions regarding harm caused by performance issues.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since the implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**8. Quantify all damages (if any) you have sustained that arise out of the quality of wholesale service provided by BellSouth pursuant to the Plan.**

**RESPONSE:** Same objections and response as given to Interrogatory 7 above.

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request.

Again, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is irrelevant as neither CompSouth nor its members have responded with any substantive information.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is unreasonably narrow for the reasons discussed above. The TRA should consider and compare real harm to the real impact of the existing Plan. BellSouth contends that the existing Plan does not rationally relate to real harms, and this request seeks some actual explanation by the CLECs of the real cost of the service issues measured and penalized by the existing Plan. The assertion that real financial impact is irrelevant is outrageous when the Plan imposes real financial penalties.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" as discussed above is not valid.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is also invalid. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 8 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. If it is too burdensome for CompSouth to simply quantify the damages that have arisen from the quality of service provided by BellSouth, then is a Plan purported to remedy these mythical damages really warranted at all? The Plan operates in real dollars (in fact, in millions of real dollars), and the parties need to provide the Authority with real dollar information in this docket.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is wrong. BellSouth received no quantification of any alleged harms during the workshop, although the CLECs repeatedly urged that service issues were of substantial significance. This request merely seeks actual facts to back up those arguments.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**9. Describe in detail all examples of CLEC customers that you contend have been negatively impacted by service provided by BellSouth for each SEEM submetric that is associated with:**

- (i) Troubles Within 30 days of Provisioning**
- (ii) Repeat Troubles Within 30 Days**
- (iii) Customer Trouble Report Rate**
- (iv) Missed Repair Appointments**
- (v) Inability To Test Line Shared Loops**
- (vi) Premature Trouble Closure**
- (vii) Any other measure (list specific measure)**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 7, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.



**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request. Again, BellSouth is merely trying to get the factual basis of general comments and allegations made during the workshop.

Again, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is irrelevant. Neither CompSouth nor its members have responded to these questions.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The interrogatory clearly requests specific examples, not theories or opinions, on which CompSouth bases contentions (that its members have already expressed) regarding quality of BellSouth's wholesale performance.

Again, regarding "General Objection No. 3", the facts on which contentions are based are not legal theories and are not subject to "development" (or change) later on in a case. Thus, the request is not "premature". Moreover, contentions regarding these areas of wholesale service have already been made. If it was not premature for the CLECs to raise this issue, then it is not premature to ask for the facts.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is unreasonably narrow. This question does not even address harm, but rather asks for details regarding the CLECs' service experience – details sufficient to allow BellSouth to investigate and discuss these issues in the context of this docket.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof", as discussed above, is not valid.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 9 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated and collected such facts before making assertions and in the workshop about the need to incent improved performance in these areas. If CompSouth has no factual information, then it is obligated to admit that.

"General Objection No. 7" regarding trade secrets, proprietary and confidential information is resolved by the Protective Order entered in this docket.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also wrong. BellSouth received no such information as part of the workshop. Rather, this request is designed to get to the facts underlying generalized discussion at the workshop.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since the implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**10. Describe in detail all examples of CLEC customers that you contend have been negatively impacted by service provided by BellSouth in any function not currently reflected in the SQM or SEEM.**

**RESPONSE:** Same objections and response as given to Interrogatory 9 above.

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request.

Again, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is particularly unpersuasive given that the individual members simply ignored the individual discovery served on them.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. This is a request for facts supporting the contentions ***already made*** by the CLECs during the workshop.

Again, regarding "General Objection No. 3", CompSouth is not being asked for an "early" formulation of legal theories, but rather for some factual examples showing whether the performance issues measured in the Plan have real effects on the CLECs. If the CLECs are effected negatively (as they contended in the workshop), then they should surely be able to supply concrete examples of that impact.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is, as discussed above, unreasonably narrow. The TRA should consider real CLEC impact before setting standards for

Bellsouth. To consider that impact, facts showing some impact should be addressed.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket, as discussed above, is invalid.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is not supported – or even explained – with reference to this request. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 10 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated facts before making assertions about the impact on CLECs of BellSouth's wholesale performance in the workshop. If CompSouth has no factual information, then it is obligated to admit that.

"General Objection No. 7" regarding trade secrets, proprietary and confidential information is resolved by the Protective Order entered in this docket.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also wrong. BellSouth seeks to get beyond the generalizations of the workshop and is entitled to actual, specific facts supporting the general concerns raised by the CLECs in that workshop.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since the implementation of the Plan in Tennessee. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**11. If you contend that BellSouth is "backsliding" (providing service inferior to that service provided when BellSouth received 271 relief) in the quality of wholesale service in Tennessee, describe in detail all such instances you contend to be examples of "backsliding".**

**RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.**

**BellSouth's Objection:** Notwithstanding BellSouth's straightforward request for specific factual information, CompSouth has provided no substantive information whatsoever in response to this request.

First, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable. Neither CompSouth nor its members have provided any substantive responses to BellSouth's discovery.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The interrogatory clearly requests specific examples, not theories or opinions, on which CompSouth bases contentions (that its members have already expressed) regarding quality of BellSouth's wholesale performance.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", are inapplicable, because Interrogatory No. 11 does not ask about harm or loss. Moreover, if the CLECs believe "backsliding" is not relevant to the Plan, then BellSouth respectfully asserts that the CLECs are wrong as an obvious legal matter. SQM/SEEMs plans were expressly developed to prevent backsliding by the Bell companies after obtaining 271 relief.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" is not a valid discovery objection, as discussed above.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 11 is confusing. In fact, the concept of backsliding has been central in all of the legal arguments and workshop discussions to date. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated facts before making assertions in its pleadings and in the workshop about the need to deter backsliding. If CompSouth has no factual information, then it is obligated to admit that.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also wrong. As with earlier interrogatories, BellSouth is not in possession of the information sought.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**12. Identify each specific provision of BellSouth's SQM and SEEM proposal filed on May 13, 2004 to which you object and the nature and reason for the objection.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 8, 9 and 10. CompSouth notes that BellSouth has filed a revised plan; thus BellSouth has superseded its May 13, 2004 proposal, and thus the Interrogatory as phrased is irrelevant.

**BellSouth's Objection:** Notwithstanding BellSouth's request for specific factual information, CompSouth has provided no substantive information in response to this request. BellSouth's minor revisions were needed to refresh the record in light of CLEC-caused delay of this case. The Plan has not changed so as to prevent comment regarding the Plan as a whole, and there is no basis to avoid responding to the Plan provisions that remained unchanged.

Again, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is not valid. As discussed above, CompSouth participating members were served with the individual discovery, which they have ignored. BellSouth is happy to obtain information directly from CompSouth's members, but these parties cannot avoid discovery altogether, as they have attempted.

Next, "General Objection No. 3" regarding contention interrogatories is particularly unsound as applied to this request. CompSouth is hardly being asked to develop contentions "early", as it has been in possession of the plan for months. If CompSouth persists in its refusal to express its objections to the plan proposed by BellSouth, then their refusal should be considered as concurrence in BellSouth's proposal.

Similarly, in "General Objection No. 3", CompSouth, argues that this discovery is premature. Again, the Plan has been revised only in small part, and the CLECs have had ample time to review and react to it.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", this interrogatory does not ask about harm or loss. Moreover, the proposed Plan can hardly be considered irrelevant to a case about adopting the proposed Plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is invalid as discussed above.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop is also wrong. BellSouth has received no specific response to its proposed plan provisions in Tennessee.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

"General Objection No. 10" does not apply to this request in any way that is apparent to BellSouth.

**13. If you contend that the Plan's scope should be extended beyond ensuring BellSouth's continued compliance with obligations arising under Section 251, please identify all legal authority, including but not limited to case law, orders, and statutes, that supports your contention.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**BellSouth's Objection:** CompSouth has provided no substantive information in response to this request.

First, as discussed in each response above, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unpersuasive given its members' lack of response to discovery served on them.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. Again, this is a matter that has been discussed since the filing of BellSouth's motion for a new Plan. BellSouth noted that CLECs during the workshop suggested that the Plan might have some application or purpose beyond backsliding, and BellSouth is entitled to discover the basis of such arguments. For these same reasons, this request is not "premature", as this case has been pending many months, and CompSouth has had ample time to formulate its legal position. (Notably, Authority rules expect parties to respond to Complaint petitions – with legal defenses – in 30 days. Given that BellSouth filed its motion for a new plan and its proposed plan last May, the CLECs have had ample time.)

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", the interrogatory does not seek harm or loss information.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is invalid as discussed in each response above.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 13 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated the law on this issue before making assertions in its pleadings and in the workshop.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop is wrong. BellSouth has been provided no such information.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**14. Have you developed an alternative performance assessment plan for BellSouth in Tennessee? If so, please provide all information that describes the alternative plan.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth refers BellSouth to the plan adopted by the TRA on June 28, 2002 in docket 01-00193.

<http://www.state.tn.us/tra/orders/2001/010019389.pdf>

**BellSouth's Objection:** Notwithstanding BellSouth's request for specific factual information, CompSouth has provided no substantive information in response to this request.

First, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unpersuasive given the fact that CompSouth members have ignored the individual discovery served on them.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The interrogatory clearly requests specific alternative plans, not theories or opinions. Alternative plans are clearly relevant to a case about altering the existing Plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is invalid as discussed in each response above.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 14 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") is wrong. BellSouth has provided no such information.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**15. Identify all amounts that you have paid to any customer as a result of service issues you contend to have arisen out of quality of wholesale service provided by BellSouth pursuant to the Plan.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 7, 9 and 10.

**BellSouth's Objection:** Notwithstanding BellSouth's request for specific factual information, CompSouth has provided no substantive information in response to this request.

"General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable as discussed regarding each request above.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The interrogatory clearly requests specific examples, not theories or opinions, on which CompSouth bases contentions (that



its members have already expressed) regarding quality of BellSouth's wholesale performance. As CompSouth itself asserts in its General Objections, BellSouth's wholesale performance, and whether incentives are needed to address any decline, are issues in this case. Moreover, CompSouth's prior involvement in this case has made clear that it will contend that certain performance measurements are necessary to incent improved performance. The request addresses the actual CLEC customer impact of the Plan and the potential for unjust enrichment to CLECs under the current Plan. These are factors the Authority should consider in evaluating changes to the Plan.

Regarding "General Objection No. 3", the facts on which contentions are based are not legal theories and are not subject to "development" (or change) later on in a case, as discussed above. Rather, the facts are what they are and there is no time at which revelation of facts that may undermine a party's position is "premature".

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance is unreasonably narrow. The impact of the Plan on CLECs, including potential unjust enrichment, is clearly a relevant factor to be considered in altering or retaining the current Plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" is invalid as discussed in each response above.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 15 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated facts regarding CLEC customer impact before making assertions in its pleadings and in the workshop about the need to incent improved performance. If CompSouth has no factual information, then it is obligated to admit that.

"General Objection No. 7" regarding trade secrets, proprietary and confidential information is addressed by the Protective Order entered in this docket.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no

attempt to explain why providing all such information it retains would be burdensome.

**16. Do you agree that an enforcement plan should have both positive incentives and negative consequences? If not, why not?**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 3, 4, 5 and 6.

**BellSouth's Objection:** CompSouth has provided no substantive information in response to this request.

First, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable, as discussed in each response above.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. CompSouth is not being asked to develop legal theories too early in this case. In fact, Director Tate discussed this concept during the workshop.

CompSouth's "General Objection No. 4" raises the issue of privileged attorney-client communications or work product. The assertion of such privileges, however, requires the asserting party to explain why the material is subject to a privilege and it must be identified as subject to a particular privilege. The sporadic use of this General Objection with respect to various requests is not sufficient to carry this burden. BellSouth does not seek the attorney's opinion, but rather the opinions of the parties.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", the request does not seek that type of information.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is invalid, as discussed above.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 16 is confusing. Director Tate spoke at length during the workshop about the concept of positive incentives rather than negative penalties. The parties are well aware of that issue. Similarly, as to the breadth of the

request, CompSouth has failed to explain why this information is too burdensome to produce.

**17. Compare the amounts paid to you under the Tennessee SEEM plan to the amounts paid in each other state outside of BellSouth's region where you have operations. The amounts should be stated in total and per access line you serve in that state.**

**RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 5, 6, 8 and 10.**

**BellSouth's Objection:** Notwithstanding BellSouth's request for specific factual information, CompSouth has provided no substantive information in response to this request.

First, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable in light of its members' choice to ignore discovery served on them. CompSouth and its members cannot make themselves immune to discovery by litigating "in a group."

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", this question asks about payments paid to the CLECs, which are obviously not harmful or loss-causing. Similarly, comparisons between the operation of these plans in Tennessee and in other states are also relevant in that they provide the Authority with a point of reference for comparison – again as merely one of several factors the TRA may use in evaluating the right balance for the performance measurements plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is invalid. As noted above, the fact that one has the burden of proof in a docket is actually *more reason*, not less, to ensure that that party has an opportunity to discover the facts it will need to marshal in support of its complaint.<sup>4</sup> BellSouth has sought factual information from CompSouth that, as articulated above, is relevant in this case. CompSouth's attempt to withhold such information on the basis of irrelevance is a thinly-veiled attempt to deprive BellSouth of facts that obviously will undermine CompSouth's position and support BellSouth's.

The assertion, (reference to "General Objection No. 6"), that this interrogatory is vague or overbroad is difficult to understand. The interrogatory contains no terms of art or phrases that have not been used in this docket

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<sup>4</sup> BellSouth does not agree that it has the burden of proof. The parties' settlement specifically provided that the TRA would revisit the plans

previously, and the objection fails to point out in any fashion what aspect of Interrogatory No. 17 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated facts before making assertions in its pleadings and in the workshop about the need to incent improved performance. If CompSouth has no factual information, then it is obligated to admit that.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable. BellSouth does not possess this information.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

### **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

BellSouth notes that CompSouth has refused to produce even one (1) document in response to BellSouth's discovery.

**1. Produce any documents relied upon in responding to First Set of Interrogatories.**

**RESPONSE:** CompSouth objects for the same reasons stated above in responding to each of these Interrogatories. In addition, CompSouth objects for the reasons stated in General Objections 4 and 8 above.

CompSouth's "General Objection No. 4" raises the issue of privileged attorney-client communications or work product. The assertion of such privileges, however, requires the asserting party to explain why the material is subject to a privilege and it must be identified as subject to a particular privilege. The sporadic use of this General Objection with respect to various requests is not sufficient to carry this burden. In addition, the information provided must establish that the privilege has been preserved. For example, material disclosed between the various companies making up CompSouth is no longer privileged, as the privilege would be waived by disclosure.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable unless the CLECs admit that they have

done nothing to respond to these requests other than review their presentations from the workshop.

**2. Produce any documents identified in responses to BellSouth's First Set of Interrogatories.**

**RESPONSE: CompSouth objects for the reasons stated in General Objections 4 and 8 above.**

CompSouth's "General Objection No. 4" raises the issue of privileged attorney-client communications or work product. The assertion of such privileges, however, requires the asserting party to explain why the material is subject to a privilege and it must be identified as subject to a particular privilege. The sporadic use of this General Objection with respect to various requests is not sufficient to carry this burden. In addition, the information provided must establish that the privilege has been preserved. For example, material disclosed between the various companies making up CompSouth is no longer privileged, as the privilege would be waived by disclosure.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable. Again, is CompSouth admitting that it has researched nothing except what it shared at the workshop? If so, then CompSouth must still identify and produce those documents.

**3. Produce all documents in your possession relating to SEEM penalties received by your company since the adoption of the Tennessee plan, including but not limited to any budgeting or financial planning documents or forecasting materials.**

**RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 5, 6, 7, 8, 9 and 10.**

**BellSouth's Objection:** "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable, given that its members have individually attempted to evade discovery. These parties must participate in discovery, even though they work as a group.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", the request does not seek such information. Neither does the request seek information about other states. Does CompSouth actually believe the impact of the current Plan on CLECs' business is not relevant?

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is erroneous, as noted above.

The assertion, (reference to "General Objection No. 6"), that this request is vague or overbroad is difficult to understand. The request contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Request No. 3 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce. Surely, CompSouth must have evaluated the impact of SEEMs payments. If CompSouth has no factual information, then it is obligated to admit that.

"General Objection No. 7" regarding trade secrets, proprietary and confidential information is resolved by the Protective Order entered in this docket.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable. BellSouth has not received the information sought.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**4. Produce all internal communications discussing or relating in any way to BellSouth's wholesale performance.**

**RESPONSE:** CompSouth objects on the grounds stated in General Objections 2, 4, 5, 6, 7, 9 and 10.

**BellSouth's Objection:** "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable. First, CompSouth is being asked what CompSouth knows. CompSouth participating members were served with the individual discovery. Importantly, however, CompSouth's members have not only failed to answer these questions, *they have failed to make any reply, objection or response whatsoever to the individualized discovery served upon them.* For this reason, CompSouth's argument regarding its members' rights is particularly unpersuasive and obstructive.

CompSouth's "General Objection No. 4" raises the issue of privileged attorney-client communications or work product. The assertion of such privileges, however, requires the asserting party to explain why the material is subject to a privilege and it must be identified as subject to a particular privilege. The sporadic use of this General Objection with respect to various requests is not sufficient to carry this burden. In addition, the information provided must establish that the privilege has been preserved. For example, material disclosed between the various companies making up CompSouth is no longer privileged, as the privilege would be waived by disclosure.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", the request does not seek such information. Moreover, the request does not refer to other states. Rather, the request seeks information to either validate or undermine the credibility of CLEC assertions regarding performance issues. If those issues are real, not merely an argument to retain SEEMs payments, CLECs should have some record showing their concern for these issues before BellSouth sought to modify the Plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" is invalid, as discussed above.

The assertion, (reference to "General Objection No. 6"), that this request is vague or overbroad is difficult to understand. The request contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Request No. 4 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce.

"General Objection No. 7" regarding trade secrets, proprietary and confidential information is resolved by the Protective Order entered in this docket.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**5. Identify and produce all correspondence in your possession regarding BellSouth's wholesale performance from 2002 to present.**

**RESPONSE:** Same objections and responses as given to Request to Produce 4 above.

**BellSouth's Objection:** First, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable in light of the failure of either CompSouth or its members to respond to discovery.

CompSouth's "General Objection No. 4" raises the issue of privileged attorney-client communications or work product. The assertion of such privileges, however, requires the asserting party to explain why the material is subject to a privilege and it must be identified as subject to a particular privilege. The sporadic use of this General Objection with respect to various requests is not sufficient to carry this burden. In addition, the information provided must establish that the privilege has been preserved. For example, material disclosed between the various companies making up CompSouth is no longer privileged, as the privilege would be waived by disclosure.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance and its reading of the request is unreasonably narrow. The request seeks correspondence of all kinds regarding wholesale performance. The CLECs cannot reasonably contend that wholesale performance is irrelevant to this case. CompSouth itself asserts that this docket will be about the formulation of a plan that measures, and is used to impose penalties for the purpose of incentives, regarding that performance. The type of incentives and the operation of such incentives are clearly within the scope of the many factors the Authority may consider in choosing whether to alter the existing plan or develop a new one.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" is not valid, as discussed above.

The assertion, (reference to "General Objection No. 6"), that this request is vague or overbroad is difficult to understand. The request contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Request No. 5 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce.

"General Objection No. 7" regarding trade secrets, proprietary and confidential information is adequately addressed by the Protective Order entered in this docket.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.



As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**6. Produce any alternative performance assessment plan or recommendations that you have developed.**

**RESPONSE:** Same objections and response as given to Interrogatory 14 and General Objection 8 above.

**BellSouth's Objection:** First, "General Objection No. 2" (CompSouth's repeated contention that it cannot be made to answer discovery on behalf of its members) is not persuasive, as discussed above, given the attempt of the CompSouth members to avoid individual discovery.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. BellSouth seeks documents, not contentions.

Regarding "General Objection No. 3", CompSouth, a attempts to argue that this discovery is premature. Yet, either the documents exist, or they do not. If they exist, it is not a premature request.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance and its reading of the request is unreasonably narrow. The request seeks CLEC alternative plans. Alternative plans considered are clearly relevant in a case about altering the plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" is invalid. Relevant documents may be discovered by parties, whether they carry a burden of proof or not.

The assertion, (reference to "General Objection No. 6"), that this request is vague or overbroad is difficult to understand. The request contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Request No. 6 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable. BellSouth did not receive alternative plans from any of the workshop participants in Tennessee.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks all alternative plans in CompSouth's possession. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**7. Produce any draft or partial alternative performance assessment plan that you have discussed or considered in any of Bellsouth's region (Tennessee, Florida, Georgia, Kentucky, North Carolina, South Carolina, Alabama, Louisiana and Mississippi).**

**RESPONSE:** Same objections and responses as given to Interrogatory 14 above. In addition, CompSouth objects for the reasons stated in General Objections 4 and 8 above.

**BellSouth's Objection:** "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unreasonable. CompSouth is being asked what CompSouth knows. As noted several times above, CompSouth participating members were served with the individual discovery. Importantly, however, CompSouth's members have not only failed to answer these questions, *they have failed to make any reply, objection or response whatsoever to the individualized discovery served upon them.* For this reason, CompSouth's argument regarding its members' rights is particularly unpersuasive and obstructive.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. The request seeks documents, not contentions.

Regarding "General Objection No. 3", that discovery is premature, the request seeks existing documents. If the documents exist, it is not premature to produce them.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance and its interpretation of the request is unreasonably narrow. CompSouth itself asserts that this docket will be about the formulation of an alternate plan that measures, and is used to impose penalties for the purpose of incentives, regarding performance. Alternative plans discussed in other states provide the Authority useful comparisons and are clearly relevant.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is erroneous, as discussed above.

The assertion, (reference to "General Objection No. 6"), that this request is vague or overbroad is difficult to understand. BellSouth clearly seeks the alternative plans discussed in other states. The request contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Request No. 7 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce.

CompSouth's assertion that this information is already in BellSouth's possession ("General Objection No. 8") because of the workshop related to the performance docket is also unreasonable. BellSouth was not presented with alternative plans during the Tennessee workshop.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

**8. Produce all contract and tariff provisions that relate to your company's obligations (if any) in the event that your customer sustains a service interruption or otherwise sustains a derogation of service.**

**RESPONSE:** Same objections and responses as given to Interrogatory 15 above.

**BellSouth's Objection:** First, "General Objection No. 2" (CompSouth's contention that it cannot be made to answer discovery on behalf of its members) is unpersuasive, as discussed above. CompSouth is being asked what CompSouth knows. CompSouth participating members were served with the individual discovery. Importantly, however, CompSouth's members have not only failed to answer these questions, *they have failed to make any reply, objection or response whatsoever to the individualized discovery served upon them.* For this reason, CompSouth's argument regarding its members' rights is particularly unpersuasive and obstructive.

Next, "General Objection No. 3" regarding contention interrogatories is also invalid as applied to this request. This request seeks contract and tariff provisions, not contentions.

Regarding "General Objection No. 3", CompSouth argues that the discovery request is premature. If the tariff provisions and contract provisions exist, then the request is not premature.

With respect to CompSouth's argument in "General Objection No. 5" that the discovery requests are not relevant to the extent they ask for "actual harm" or "loss", CompSouth's assertion of relevance and its reading of the question is unreasonably narrow. As CompSouth itself asserts, this docket will be about the formulation of a plan that measures, and is used to impose penalties for the purpose of incentives, regarding performance. The type of incentives and the operation of such incentives are clearly within the scope of the many factors the Authority may consider in choosing whether to alter the existing plan or develop a new one. Clearly, these matters relate to whether CLECs view these performance issues as serious enough to address with their own customers. Likewise, their own customer obligations are relevant to show the real impact (or windfall) of SEEMs payments. Similarly, comparisons between the operation of these plans in Tennessee and in other states are also relevant in that they provide the Authority with a point of reference for comparison – again as merely one of several factors the TRA may use in evaluating the right balance for the performance measurements plan.

CompSouth's argument (also in "General Objection No. 5") that BellSouth has "the burden of proof" and cannot obtain facts from other participants in this docket is erroneous, as discussed above.

The assertion, (reference to "General Objection No. 6"), that this request is vague or overbroad is difficult to understand. The request contains no terms of art or phrases that have not been used in this docket previously, and the objection fails to point out in any fashion what aspect of Request No. 8 is confusing. Similarly, as to the breadth of the request, CompSouth has failed to explain why this information is too burdensome to produce.

"General Objection No. 7" regarding trade secrets, proprietary and confidential information is resolved by the Protective Order entered in this docket.

As to "General Objection No. 9", CompSouth has failed to explain in what way providing the full amount ("all") of the information will be burdensome.

As to "General Objection No. 10", BellSouth clarifies that it seeks information since implementation of the Tennessee Plan. CompSouth has made no attempt to explain why providing all such information it retains would be burdensome.

### **CONCLUSION**

CompSouth provided no substantive answers and no documents whatsoever in response to BellSouth's discovery. Moreover, CompSouth did not even take the time to

relate its General Objections to the specific request from BellSouth. As a result, its objections are confusing and burdensome to review. The failure to tailor the objections to the specific requests further demonstrates the lack of effort made by CompSouth to respond to discovery.

It is clear from the response of CompSouth and the complete lack of response from its member organizations that CompSouth continues its attempt to delay this proceeding as long as possible in order to continue operating under the existing plan. It is perhaps this ongoing effort to delay that best identifies the problems with the existing Plan. Rather than discuss the issues raised by BellSouth, and rather than respond to BellSouth's questions about the real impact of the existing Plan, CompSouth and its member companies refuse to talk in specifics and refuse to provide specific documents in an apparent hope to maintain the advantage of the existing Plan.

Finally, CompSouth repeats in response to each and every request its objection about answering on behalf of its member organizations. Both CompSouth and each of its members, however, received discovery in this docket. The fact is that CompSouth objected to answering on behalf of the companies and the companies, in turn, failed to answer at all, meaning these parties expect to be able to participate in dockets by raising general, unsubstantiated complaints and not participate in discovery. This strategy should not be tolerated as it deprives the Authority of the information it needs to evaluate the issues before it. Neither the Authority nor CompSouth would agree that BellSouth could avoid discovery by litigating in a "coalition" of other original Bell Operating Companies.

For these reasons, BellSouth respectfully requests an order from the Hearing Officer:

1. Requiring CompSouth to respond to each and every interrogatory and request for production of documents contained in BellSouth's first set of discovery;
2. Ordering that, to the extent CompSouth fails to provide specific factual information or responds that it has none, then CompSouth shall be prohibited from providing testimony related to those issues; and
3. Providing any other such relief the Hearing Officer deems appropriate.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2005, a copy of the foregoing document was served on the following, via hand delivery, facsimile, overnight, electronic mail or US Mail, addressed as follows:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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A handwritten signature in black ink, appearing to read "Henry Walker", is written over a horizontal line.